

Subpart G—Hearings

§ 20.701 Standard of proof.

The party that bears the burden of proof shall prove his or her case or affirmative defense by a preponderance of the evidence.

§ 20.702 Burden of proof.

(a) Except for an affirmative defense, or as provided by paragraph (b) of this section, the Coast Guard bears the burden of proof.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order bears the burden of proof.

§ 20.703 Presumptions.

In each administrative hearing, a presumption—

(a) Imposes on the party against whom it lies the burden of going forward with evidence to rebut or meet the presumption; but

(b) Does not shift the burden of proof in the sense of the risk of non-persuasion.

§ 20.704 Scheduling and notice of hearings.

(a) With due regard for the convenience of the parties, and of their representatives or witnesses, the ALJ shall, as early as possible, fix the date, time, and place for the hearing and notify all parties and interested persons.

(b) The ALJ may grant a request for a change in the date, time, or place of a hearing.

(c) At any time after commencement of a proceeding, any party may move to expedite the proceeding. A party moving to expedite shall—

(1) Explain in the motion the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits supporting any representations of fact.

(d) After timely receipt of the motion and any responses, the ALJ may expedite pleadings, pre-hearing conferences, and the hearing, as appropriate.

§ 20.705 Failure to appear.

The ALJ may enter a default under § 20.310 against a respondent threat-

ening to fail, or having failed, to appear at a hearing unless,—

(a) Before the time for the hearing, the respondent shows good cause why neither the respondent nor his or her representative can appear; or,

(b) 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.

§ 20.706 Witnesses.

(a) Each witness shall testify under oath or affirmation.

(b) If a witness fails or refuses to answer any question the ALJ finds proper, the failure or refusal constitutes grounds for the ALJ to strike all or part of the testimony given by the witness or to take any other measure he or she deems appropriate.

§ 20.707 Telephonic testimony.

(a) The ALJ may order the taking of the testimony of a witness by telephonic conference call. A person presenting evidence may by motion ask for the taking of testimony by this means. The arrangement of the call must let each participant listen to and speak to each other within the hearing of the ALJ, who will ensure the full identification of each so the reporter can create a proper record.

(b) The ALJ may issue a subpoena directing a witness to testify by telephonic conference call. The subpoena in any such instance issues under the procedures in § 20.608.

§ 20.708 Witnesses' fees.

(a) Each witness summoned in an administrative proceeding shall receive the same fees and mileage as a witness in a District Court of the United States.

(b) The party or interested person who calls a witness is responsible for all fees and mileage due under paragraph (a) of this section.

§ 20.709 Closing of the record.

(a) When the ALJ closes the hearing, he or she shall also close the record of the proceeding, as described in § 20.903, unless he or she directs otherwise. Even after the ALJ closes it, he or she may reopen it.

(b) The ALJ may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.

(a) Before the ALJ closes the hearing, he or she may hear oral argument so far as he or she deems appropriate.

(b) Before the ALJ decides the case, and upon terms he or she finds reasonable, any party may file a brief, proposed findings of fact and conclusions of law, or both. Any party may waive this right. If all parties waive it, then the ALJ may issue an oral order at the close of the hearing.

(c) Any oral argument, brief, or proposed findings of fact and conclusions of law form part of the record of the proceeding, as described in § 20.903.

Subpart H—Evidence

§ 20.801 General.

Any party may present his or her case or defense by oral, documentary, or demonstrative evidence; submit rebuttal evidence; and conduct any cross-examination that may be necessary for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The ALJ may admit any relevant oral, documentary, or demonstrative evidence, unless privileged. Relevant evidence is evidence tending to make the existence of any material fact more probable or less probable than it would be without the evidence.

(b) The ALJ may exclude evidence if its probative value is substantially outweighed by the danger of prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

§ 20.804 Objections and offers of proof.

(a) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on

every objection must appear in the record. No party may raise an objection to the admission or exclusion of evidence on appeal unless he or she raised it before the ALJ.

(b) Whenever evidence is objected to, the party offering it may make an offer of proof, which must appear in the record.

§ 20.805 Proprietary information.

(a) The ALJ may limit introduction of evidence or issue such protective or other orders as in his or her judgment are consistent with the object of preventing undue disclosure of proprietary matters, including, among others, ones of a commercial nature.

(b) When the ALJ determines that information in a document containing proprietary matters should be made available to another party, the ALJ may direct the party possessing the document to prepare a non-proprietary summary or extract of it. The summary or extract may be admitted as evidence in the record.

(c) If the ALJ determines that a non-proprietary summary or extract is inadequate and that proprietary matters must form part of the record to avert prejudice to a party, the ALJ may so advise the parties and arrange access to the evidence for a party or representative.

§ 20.806 Official notice.

The ALJ may take official notice of such matters as could courts, or of other facts within the specialized knowledge of the Coast Guard as an expert body. When all or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the decision must state as much; and any party, upon timely request, shall receive an opportunity to rebut the fact.

§ 20.807 Exhibits and documents.

(a) Each exhibit must be numbered and marked for identification by the party offering it. The original of each exhibit so marked, whether or not offered or admitted into evidence, must be filed and retained in the record of the proceeding, unless the ALJ permits the substitution of a copy. The party introducing each exhibit so marked